In the Supreme Court of the United States.

OCTOBER TERM, 1920.

IN THE MATTER OF THE APPLICATION of D. H. Riddle for a writ of mandamus to Hon. W. I. Grubb, United States district judge for the Northern District of Alabama, and to the United States District Court for the Eastern Division of the Northern District of Alabama.	No. 27, Original.

ANSWER OF HON. W. I. GRUBB TO RULE TO SHOW CAUSE WHY WRIT OF MANDAMUS SHOULD ISSUE TO HIM.

The answer of W. I. Grubb, judge of the District Court of the United States for the Northern District of Alabama, to the rule upon him to show cause why a writ of mandamus should not issue to him, as prayed for in the petition of D. H. Riddle filed herein.

The respondent respectfully answers and certifies to the honorable the Supreme Court of the United States as follows:

1. That petitioner was duly indicted, as set out in Appendix B of his petition, in the District

Court of the United States for the Eastern Division of the Northern District of Alabama, and that the minute entries as shown and set out in Appendix B, pages 25 to 48, are correct; that said petitioner was duly convicted and sentenced as therein shown.

2. That thereupon and during the term of said court at which petitioner was convicted, a motion to correct judgment entry and a separate motion to set aside judgment were filed, as shown on pages 49 to 53 of the petition, said motions being made during the said term of court; that upon the hearing of the motion to correct judgment entry, the defendants were present in person and by counsel and the United States was represented by the district attorney; that the court entertained said motion and heard evidence offered thereon, sustaining the objections of the district attorney to such part of the evidence sought to be offered as the court deemed irrelevant, incompetent, immaterial, or otherwise improper; that neither under the State practice in Alabama, nor under the practice in the District Court of the United States for the Northern District of Alabama has it ever been the practice or been customary for the person against whom motion is made to file any joinder of issue; that the hearing of this motion proceeded on the merits in accordance with the usual practice in cases of litigated motions and the Government, being represented by the district attorney, resisted the motion

and the matter was tried upon such hearing as if the Government had joined issue upon the motion; that, upon the conclusion of the evidence by the movants, when the movant's counsel stated that he rested, the court turned to the district attorney and inquired whether or not the Government desired to offer any evidence, whereupon the district attorney replied that the Government did not care to offer any evidence, and thereupon the court overruled and denied the motion, stating from the bench at the time that in the judgment of the court the record was as it should be.

3. That the motion to set aside the judgment was likewise submitted in the same manner and upon the same evidence and was overruled and denied by the court.

4. The said motion was heard on the 26th day of October, 1920, during the term at which the petitioner had been convicted, and the said term of court adjourned by operation of law on the first Monday of November, 1920.

5. So far as the affidavit of the stenographer is concerned, there is no official stenographer for the District Court of the Northern District of Alabama, but the person who makes the affidavit is a person employed by some of the parties, and his certificate is not a part of the record in the case.

6. Respondent attaches to his answer a certified copy of all the various minute entries and final

records of the District Court of the United States for the Northern District of Alabama, Eastern Division thereof, upon the trial of the case of *United States* v. *D. H. Riddle et al.*, together with a certificate of the clerk of said court to the effect that these are all of the minute entries in said case, and respondent hereby certifies that the same is a full, true, and complete transcript of all of the minute entries entered in said court, and further certifies that there are no bench notes or other records, or quasi records of any kind or character of said court or said judge taken at the trial of said case or in any wise in conflict with the final record hereto attached marked Exhibit "A" and made a part of this return.

7. Respondent is advised that it is not necessary that he should make any further or other answer to the rule aforesaid than this herein contained, nor more specifically to any of the allegations set forth in the petition for mandamus aforesaid. And having fully answered said rule, he prays to be hence dismissed and that the rule be discharged.

W. I. GRUBB,

Judge of the District Court of the United States for the Northern District of Alabama.

EXHIBIT "A."

COURT RECORD.

MONDAY, MAY 3D, 1920.

THE UNITED STATES OF AMERICA,
Northern District of Alabama,
Eastern Division:

Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Alabama, begun and held at the United States court rooms, in the city of Anniston, in said division and district, on the first Monday in May, it being the 3d day thereof, in the year of our Lord one thousand nine hundred and twenty and of the independence of the United States of America the one hundred forty-fourth year.

Present: Hon. W. I. Grubb, judge of the District Court of the United States for the Northern District of Alabama, and Hon. Erle Pettus, United States attorney; Chas. J. Allison, clerk; and H. A. Skeggs, United States marshal.

MONDAY, AUGUST 16TH, 1920.

The District Court of the United States for the Eastern Division of the Northern District of Alabama met pursuant to adjournment: Present, Hon. W. I. Grubb, United States district judge, Northern District of Alabama, presiding; Hon. Erle Pettus, United States attorney; H. A. Skeggs, United States marshal; and Chas. J. Allison, clerk.

UNITED STATES
vs.
D. H. RIDDLE, W. A. SAVAGE, A. M. SAVAGE, W. O. Wooten, W. G. Hardy, T. A. St. John, S. E. Graham.

This cause coming in to be heard this day, come the parties hereto, the United States of America, by United States Attorney Erle Pettus, cometh also each of the defendants herein in his own proper person and by counsel, and defendants submit demurrer to the indictment filed herein against them, and each of them, charging an alleged violation of sec. 37 and 215 of the Penal Code of the United States. After understanding said demurrers, it is ordered by the court that said demurrers be sustained as to counts one and three of the indictment, and that said demurrers be overruled as to counts two, four, five, six, and seven of the indictment.

Thereupon defendants submit motion for severance as to each defendant and, after understanding said motion, it is ordered by the court that the same be, and hereby is, overruled and denied, to which ruling of the court each defendant excepts separately and severally.

Thereupon the defendants and each of them being arraigned in open court upon the indictment filed herein against them, they and each of them plead not guilty thereto and, for defense, throw themselves upon their country, as doth also the United States attorney.

To try this cause come a jury of good and lawful men duly impanelled, sworn, and charged a true verdict to render according to the law and the evidence.

During the introduction of the evidence, the hour of daily adjournment having arrived, it is ordered by the court that this cause be and the same is continued for further hearing until nine o'clock a. m. to-morrow morning, August 17th, 1920.

TUESDAY, AUGUST 17TH, 1920.

UNITED STATES
vs.
D. H. RIDDLE, W. A. SAVAGE, A. M. SAVAGE, W. O. Wooten, W. G. Hardy, T. A. St. John, S. E. Graham.

This being the day and the hour to which this cause was on yesterday continued for further hearing, come again the parties hereto, the United States of America by United States Attorney Erle Pettus, and cometh also each of the defendants in his own proper person and by counsel, and cometh also the jury heretofore selected, impanelled, sworn, and charged to try this cause, and the further hearing of this cause is resumed and begun.

During the introduction of the evidence, the hour of daily adjournment having arrived, it is ordered by the court that this cause be and same is hereby continued for further hearing until nine o'clock a. m. August 18th, 1920.

WEDNESDAY, AUGUST 18TH, 1920.

UNITED STATES

vs.

D. H. RIDDLE, W. A. SAVAGE, A. M. SAVAGE, W. O. Wooten, W. G. Hardy, T. A. St. John, S. E. Graham.

This being the day and the hour to which this cause was on yesterday continued for further hearing, come again the parties hereto, the United States of America, by Erle Pettus, United States attorney, and cometh also each of the defendants in his own proper person and by counsel, and cometh also the jury heretofore selected, impanelled, sworn, and charged to try this cause, and the further hearing of this cause is resumed and begun.

During the introduction of the evidence, the hour of daily adjournment having arrived, it is ordered by the court that this cause be and the same is continued for further hearing until nine o'clock a. m., August 19th, 1920.

THURSDAY, AUGUST 19TH, 1920.

UNITED STATES

vs.

D. H. RIDDLE, W. A. SAVAGE, A. M. SAVAGE, W. O. Wooten, W. G. Hardy, T. A. St. John, S. E. Graham.

This being the day and hour to which this cause was on yesterday continued for further hearing, come again the parties hereto, the United States of America, by United States Attorney Erle Pettus; cometh also each of the defendants in his own proper person and by counsel; cometh also the

jury heretofore selected, impanelled, sworn, and charged to try this cause; and the further hearing of this cause is resumed and begun.

After the introduction of all the evidence in the case, the argument of counsel on behalf of the United States of America and on behalf of each of the defendants, separately and severally, and the oral charge delivered by the court, the jury retire in charge of an officer of this court to consider of their verdict.

Thereupon the daily hour of adjournment having arrived and the jury having this cause under consideration not having as yet agreed upon a verdict, it is ordered, adjudged, and decreed by the court that this cause be, and the same is hereby, continued until 8.30 a. m., August 20th, 1920, for the purpose of receiving the verdict of the jury in said cause in the event the jury shall by that time have reached and agreed upon a verdict in this cause.

FRIDAY, AUGUST 20TH, 1920.

UNITED STATES

vs.

D. H. RIDDLE, W. A. SAVAGE, A. M. SAVAGE, W. O. Wooten, W. G. Hardy, T. A. St. John, S. E. Graham.

This being the day and the hour to which this cause was on yesterday continued for the report of the jury, cometh again the parties hereto, the United States of America by United States attorney; cometh also each of the defendants in his own proper person and by counsel; cometh also the

jury heretofore selected, impanelled, sworn, and charged to try this cause.

Thereupon the jury being inquired of by the court as to whether or not they had been able to reach a verdict, and the jury making known to the court that they have reached and agreed upon their verdict, the jury return in open court the following verdict, which is read in open court by the clerk of this court, and in the presence of each of the defendants, to wit: "We, the jury, find the defendants W. A. Savage, A. M. Savage, W. O. Wooten, D. H. Riddle, T. A. St. John, S. E. Graham, and W. G. Hardy guilty as charged under counts 2, 4, and 5 of the indictment. J. W. McClurkin, foreman."

Thereupon motion is made by the defendants that the jury be polled, which said motion is granted by the court, and each member of the jury is asked by the clerk of this court to state whether or not the above verdict is his verdict, and each member of the jury stated that the above verdict is his verdict, which said poll of the jury is taken in open court and in the presence of each of the defendants and their counsel.

Thereupon the defendants and each of them being separately and severally inquired of by the court and showing no good or sufficient cause why sentence should not now be pronounced upon him, it is

Ordered, adjudged, and decreed by the court that the defendant W. A. Savage be and hereby is sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one hundred dollars on count two of

the indictment, and is further sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months, and to pay a fine of one hundred dollars on count four of the indictment, said sentence of imprisonment and confinement under count four of the indictment to commence at the termination of the sentence of imprisonment and confinement imposed upon the defendant W. A. Savage under count two of the indictment; and it is further ordered, adjudged, and decreed by the court that the defendant W. A. Savage be further sentenced, and he hereby is further sentenced, to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one thousand dollars under count five of the indictment, said sentence of imprisonment and confinement under count five of the indictment to commence at the termination of the sentence of imprisonment and confinement imposed upon the defendant under count four of the indictment; and thereupon it is further

Ordered, adjudged, and decreed by the court that the defendant D. H. Riddle be, and he is hereby, sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during the period of thirteen months and to pay a fine of one hundred dollars on count two of the indictment; and it is further ordered, adjudged, and decreed by the court that the defendant D. H. Riddle be, and he hereby is, further sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen

months and to pay a fine of one hundred dollars on count four of the indictment, said sentence of imprisonment and confinement under count four of the indictment to commence at the termination of the sentence of imprisonment and confinement under count two of the indictment; and it is further ordered, adjudged, and decreed by the court that the defendant D. H. Riddle be, and he hereby is, further sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of ten thousand dollars on count five of the indictment, said sentence of imprisonment and confinement under count five of the indictment to commence at the termination of the sentence of imprisonment and confinement imposed under count four of the indictment; and thereupon, it is further

Ordered, adjudged, and decreed by the court that the defendant W. O. Wooten be and he hereby is sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one hundred dollars on count two of the indictment; and it is further ordered, adjudged, and decreed by the court that the defendant W. O. Wooten be and he hereby is further sentenced to be imprisoned and confined in the United States penitentiary, at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one hundred dollars on count four of the indictment, said sentence of imprisonment and confinement under count four of the indictment to commence at the termination

of the imprisonment and confinement imposed under count two of the indictment; and it is further ordered, adjudged, and decreed by the court that the defendant W. O. Wooten be and he hereby is further sentenced to be imprisoned and confined in the United States penitentiary, at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one thousand dollars on count five of the indictment, said sentence of imprisonment and confinement under count five of the indictment to commence at the termination of the sentence of imprisonment and confinement imposed under count four of the indictment; and thereupon it is

Ordered, adjudged, and decreed by the court that the defendant W. G. Hardy be and he hereby is sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and to pay a fine of one thousand dollars; and thereupon, is is further

Ordered, adjudged, and decreed by the court that the defendant A. M. Savage be and he hereby is sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of eighteen months and to pay a fine of one thousand dollars; and thereupon, it is further

Ordered, adjudged, and decreed by the court that the defendant T. A. St. John be and he hereby is sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months, and to pay a fine of one thousand dollars; and thereupon it is further

Ordered, adjudged, and decreed by the court that the defendant S. E. Graham be and he is hereby sentenced to be imprisoned and confined in the United States penitentiary at Atlanta, Georgia, for and during a period of thirteen months and a fine of one thousand dollars.

WEDNESDAY, SEPTEMBER 15TH, 1920.

The District Court of the United States for the Eastern Division of the Northern District of Alabama met pursuant to adjournment: Present, Hon. W. I. Grubb, United States district judge, Northern District of Alabama, presiding; Erle Pettus, United States attorney; H. A. Skeggs, United States marshal; and Chas. J. Allison, clerk.

UNITED STATES

vs.

D. H. RIDDLE, A. M. SAVAGE, W. O. WOOTEN, W. G. Hardy, T. A. St. John, S. E. Graham, W. A. Savage.

Order granting extension of time to file "bill of exceptions."

The above petition having this day been presented to the undersigned, it is ordered by the court, and it is the judgment and decree of the court, that the time for signing and filing a bill of exceptions on the part of said defendants, separately and severally, be and it is hereby extended to and including the 1st day of December, 1920.

This the 15th day of September, 1920.

W. I. GRUBB, *Judge.*

MONDAY, OCTOBER 25TH, 1920.

The District Court of the United States in and for the Eastern Division of the Northern District of Alabama met pursuant to adjournment: Present, Hon. W. I. Grubb, United States district judge, Northern District of Alabama, presiding; Erle Pettus, United States attorney; Ralph W. Quinn, assistant United States attorney; Jim C. Smith, assistant United States attorney; H. A. Skeggs, United States marshal; and Chas. J. Allison, clerk.

UNITED STATES
vs.
W. A. SAVAGE ET AL.

A motion to make certain changes in the final record having been made in said cause by one of the defendants, namely, D. H. Riddle, said motion being set for hearing at Anniston on October 25, 1920,

It is considered by the court that the presence of the defendants in said cause are necessary on the hearing of said motion. It is therefore ordered by the court that all of said defendants who are on bond be notified to be present at said date. It is further ordered that the warden of the United States penitentiary at Atlanta, Georgia, be and he is hereby ordered to produce at said hearing on said date at Anniston said defendants, W. A. Savage and A. M. Savage, who are now confined in said penitentiary.

This 25th day of October, 1920.

W. I. GRUBB,
United States District Judge.

TUESDAY, OCTOBER 26TH, 1920.

The District Court of the United States in and for the Eastern Division of the Northern District of Alabama, met pursuant to adjournment: Present, Hon. W. I. Grubb, United States district judge, Northern District of Alabama, presiding; Erle Pettus, United States attorney; Ralph W. Quinn, assistant United States attorney; Jim C. Smith, assistant United States attorney; H. A. Skeggs, United States marshal; and Chas. J. Allison, clerk.

UNITED STATES

vs.

D. H. RIDDLE, W. O. WOOTEN, W. A. SAVAGE, A. M. Savage, T. A. St. John, W. G. Hardy, S. E. Graham.

The motion to amend the record of the judgment entry in this cause coming on to be heard this day, and the plaintiff appearing by the Hon. Erle Pettus, United States district attorney, and the defendants all being present in person, and the movant, D. H. Riddle, being present in person and by attorney, evidence was offered by the movant in support of the motion, and the court, after hearing the argument of counsel for the movant, being of the opinion that the record of the judgment entry is as it should be and does not need amendment, and that the motion is not well taken,

It is ordered and adjudged by the court that said motion be and is hereby denied, and the movant excepts to the ruling of the court in this behalf.

TUESDAY, OCTOBER 26TH, 1920.

UNITED STATES

vs.

D. H. RIDDLE, W. O. WOOTEN, W. A. SAVAGE, A. M. Savage, T. A. St. John, W. G. Hardy, S. E. Graham.

The motion, to set aside the judgment in this cause coming on to be heard, this day, comes the plaintiff appearing by the Hon. Erle Pettus, United States district attorney, and the defendants, all being present in person, and the movant, D. H. Riddle, being present in person and by attorney, evidence was offered by the movant in support of the motion, and the court, after hearing the evidence and argument of counsel for the movant, being of the opinion that said motion is not well taken,

It is ordered and adjudged by the court that the motion be and is hereby denied, and that the judgment heretofore entered in this cause be and is hereby in all things affirmed, and the movant excepts to the ruling of the court in this behalf.

FRIDAY, NOVEMBER 12TH, 1920.

The District Court of the United States for the Eastern Division of the Northern District of Alabama met pursuant to adjournment: Present, Hon. W. I. Grubb, United States district judge, Northern District of Alabama, presiding; Hon. Erle Pettus, United States attorney; H. A. Skeggs, United States marshal; and Chas. J. Allison, clerk.

UNITED STATES *vs.* D. H. RIDDLE, A. M. SAVAGE, W. A. SAVAGE, T. A. St. John, S. E. Graham, W. G. Hardy, W. O. Wooten.	Order.

In this cause, for good cause shown, it is ordered by the court that the time for presenting and filing the bill of exceptions embracing all matters excepted to prior to the time of the order and agreement of extension, heretofore made and entered into, but not affecting any exceptions taken in said cause after the original order and agreement of extension was made and entered into, this order not applying to any such subsequent exceptions; and it is hereby extended to and including the 1st day of January, 1921, subject to the condition that the defendant D. H. Riddle consent to the submission of the writ of error as provided for in the original agreement of extension.

Given this 12th day of November, 1920.

W. I. GRUBB, *Judge.*

UNITED STATES OF AMERICA,
Northern District of Alabama:

I, Charles J. Allison, Clerk of the District Court of the United States of America in and for said division of said district, do hereby certify that the foregoing is a true, full, and complete copy of the minutes and decrees entered of record in this court in the matter of the *United States of America* vs. *D. H. Riddle, W. O. Wooten, A. M. Savage, W. A. Savage, W. G. Hardy, S. E. Graham, and T. A. St. John,* No. 744, criminal docket, as fully as the same does appear of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Birmingham, in said district, this 31st day of December, 1920.

[SEAL.] CHAS. J. ALLISON,
Clerk of the U. S. District Court.

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